

17 March 2021

Appellant's Statement of Case

Appeal of refusal of planning application reference 2020/3800/P
30 – 32 ALBANY STREET, LONDON

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I. INTRODUCTION

- I.1 This planning appeal is made under s.78 of the Town and Country Planning Act 1990 against the London Borough of Camden's ("the Council") decision of 28 October 2020 to refuse planning permission for "Enlargement of existing side extension at first and second floors and remodelling of dormers at main roof level in association with expansion of ancillary landlord accommodation (Class A4) and short-term let use (Class C1)" (the "Appeal Scheme") at 30-32 Albany Street, London, NW1 4EA (the "the Property") allocated reference 2020/3800/P (the "Application").
- I.2 This Statement of Case has been prepared jointly by Mishcon de Reya LLP and Jon Lowe of Jon Lowe Heritage Ltd on behalf of QHA Limited (the "Appellant"), who was also the applicant.
- I.3 In August 2019 planning permission was granted for the "Change of use of first and second floors from ancillary kitchen, function room and landlord accommodation to public house (Class A4), to create 3 x 1-bed serviced apartments at first and second floor levels (Class C1) and 1 x 3-bed ancillary landlord accommodation (Class A4) at second and third floor levels; erection of three storey rear/side extension and insertion of new rear/side door to existing yard; installation of 3 x rear/side dormer windows; excavation of existing basement down by 0.45m and installation of new external metal staircase to front lightwell with reference 2017/4134/P (the "2019 Permission"). We enclose a copy of the 2019 Permission at Appendix I.
- I.4 The Property has been operated by the Applicant since 2002. Prior to the implementation of the 2019 Permission the Queens Head and Artichoke was operated as a 'gastropub' style public house on the ground floor with the commercial kitchen and ancillary restaurant space on the first floor. The second floor was a single dwelling in which the Applicant owners are resident.
- I.5 In April 2020 the works were commenced on implementing the 2019 Permission and it is anticipated that the works will be complete by May 2021. On completion of the works the Appellant will operate the Property in accordance with the 2019 Permission.
- I.6 In this statement, it will be demonstrated that the proposal is fully policy compliant and that the core issues are of design and conservation for which the Appellant has provided the necessary evidence throughout the planning process.

2. THE SITE

- 2.1 Nos. 30-32 Albany Street is a public house, The Queen's Head and Artichoke, that occupies a corner site at the junction of Albany Street and Longford Street. A public house has existed on the site of Nos. 30-32 since Albany Street was laid out in the early 19th century, with an inn of the same name previously sited on land to the west that now forms part of Regent's Park.
- 2.2 The building is three storeys in height, plus attic and basement levels, and is built in a loose Queen Anne style with Art Nouveau motifs and detailing. The front elevations are finished in painted stucco at ground floor level and red brick above, with detailing picked out in white faience. A corner turret at the junction of the two front elevations, also finished in faience, is a prominent feature within the townscape. The rear elevations are subservient and largely obscured from views in the public realm due to the surrounding built environment. The roof is set well back from the front elevations and like the rear and side elevations is largely imperceptible in street level views.
- 2.3 The building has clear heritage value and this is recognised in the Regent's Park Conservation Area appraisal document, where it is considered to make a positive contribution to the Area's character and appearance. Nos. 30-32 Albany Street is also within the setting of a number of listed buildings: Walton House (Grade II) and Nos. 34– 48 Albany Street abut the site to the east and north respectively.

3. **PROPOSED SCHEME**

- 3.1 The 2019 Permission for development at the Property comprising a three-storey side/rear extension and three side dormers associated with a change of use at Nos. 30-32 was granted in August 2019 (2017/4134/P). The Appeal Scheme sought enlargement of some of the elements in the consented 2019 Permission.
- 3.2 Prior to the submission of the proposals, design changes were made in response to pre-application consultation and feedback from Camden Borough Council officers (the "Pre Application Advice"). The main design change related to the design of the proposed dormer which was adjusted to better reflect a traditional tripartite design. We enclose a copy of the Council's pre-application consultation at Appendix 2. Common aims during development of the proposals have been to minimise harm to the historic environment, promote good design and to regenerate the site to accord with national, regional and local planning policy and guidance relating to the historic environment.
- 3.3 As Nos. 30-32 Albany Street is not statutorily listed the proposed internal changes and associated impacts, where they will not impact or change the external appearance of the building, will not require planning permission and are therefore not assessed here. The proposed external changes will take account of the significance of the subject building and its contribution to the Regent's Park Conservation Area and setting of nearby listed buildings.

4. POLICY CONTEXT

4.1 In stating their reasons for refusing the Application the Council has referred to only the following two policies from their 2017 Local Plan:

4.1.1 D1 (Design); and

4.1.2 D2 (Heritage).

4.2 Of relevance within Policy D1, the following points require that development:

- (a) Respects local context and character;
- (b) Preserves or enhances the historic environment and heritage assets in accordance with Policy D2 Heritage;
- (c) Comprises details and materials that of high quality and complement the local character.

4.3 Policy D2 Heritage states that, relating to Conservation Areas, The Council will:

- (e) Require that development within conservation areas preserves or, where possible, enhances the character or appearance of the area;

4.4 Policy D2 Heritage states that, relating to Listed Buildings, The Council will:

- (j) Resist proposals for a change of use or alterations and extensions to a listed building where this would cause harm to the special architectural and historic interest of the building; and
- (k) Resist development that would cause harm to significance of a listed building through an effect on its setting.

4.5 We enclose copies of these two policies in full at Appendix 3 and 4 respectively. As set out in section 7 the Appellant considers the Application to fully comply with these policies.

4.6 Policies D1 and D2 are accordant with national policy and in accordance with the statutory duties under sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act. We consider that the Appeal Scheme will preserve the character and appearance of the conservation area and the setting of the adjacent listed building, Walton House.

5. **LEGISLATION**

- 5.1 The Planning (Listed Building and Conservation Areas) Act 1990 (the "PLBCAA") is the current legislation relating to listed buildings and conservation areas and is a primary consideration.
- 5.2 In respect of proposals potentially affecting listed buildings, Section 66 PLBCAA states that "in considering whether to grant planning permission or permission in principle for development which affects a listed building or its setting, the local planning authority or, as the case may be, the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses".
- 5.3 With regard to conservation areas, Section 72 PLBCAA places a duty on the decision maker: "In the exercise, with respect to any buildings or other land in a conservation area, of any functions under or by virtue of any of the provisions mentioned in subsection (2), special attention shall be paid to the desirability of preserving or enhancing the character or appearance of the area."
- 5.4 **National Planning Policy Framework (revised 2019)**
- 5.5 The Government's planning policies for England are set out within the National Planning Policy Framework (the "NPPF") (revised 2019). It sets out a framework within which locally prepared plans can be produced. It is a material consideration and relates to planning law, noting that applications are to be determined in accordance with the local plans unless material considerations indicate otherwise.
- 5.6 Chapter 16, 'Conserving and enhancing the historic environment', is of particular relevance. Heritage assets are recognised as being an irreplaceable resource that should be conserved in a manner appropriate to their significance. (Paragraph 184) The conservation of heritage assets in a manner appropriate to their significance is also a core planning principle.
- 5.7 Conservation (for heritage policy) is defined at annex 2 as "a process of maintaining and managing change in a way that sustains and, where appropriate, enhances its significance." It differs from preservation which is the maintenance of something in its current state.
- 5.8 Significance (for heritage policy) is defined at annex 2 as "The value of a heritage asset to this and future generations because of its heritage interest. The interest may be archaeological, architectural, artistic or historic. Significance derives not only from a heritage asset's physical presence, but also from its setting..."
- 5.9 As a framework for local plans the NPPF, at paragraph 185, directs that plans should set out a positive strategy for the conservation and enjoyment of the historic environment, taking into account four key factors:
- 5.9.1 "The desirability of sustaining and enhancing the significance of heritage assets, and putting them to viable uses consistent with their conservation;
- 5.9.2 The wider social, cultural, economic and environmental benefits that conservation of the historic environment can bring;

- 5.9.3 The desirability of new development making a positive contribution to local character and distinctiveness; and
- 5.9.4 Opportunities to draw on the contribution made by the historic environment to the character of a place.”
- 5.10 This approach is followed through in decision making with Local Planning Authorities having the responsibility to take account of ‘a’ as well as ‘The positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality’ and ‘the desirability of new development making a positive contribution to local character and distinctiveness’. (Paragraph 192)
- 5.11 Describing the significance of any heritage asset affected, including the contribution made by its setting, is the responsibility of an applicant. Any such assessment should be proportionate to the asset’s significance. (Paragraph 189)
- 5.12 Identifying and assessing the particular significance of any heritage asset potentially affected by a proposal, taking into account evidence and expertise, is the responsibility of the Local Planning Authorities. The purpose of this is to ‘avoid or minimize any conflict between the heritage asset’s conservation and any aspect of the proposal’. (Paragraph 190)
- 5.13 In decision making where designated heritage assets are affected, Paragraph 193 places a duty of giving ‘great weight’ to the asset’s conservation when considering the impact of a proposed development, irrespective of the level of harm.
- 5.14 Heritage Assets are defined in Annex 2 as: “A building, monument, site, place, area or landscape identified as having a degree of significance meriting consideration in planning decisions, because of its heritage interest. It includes designated heritage assets and assets identified by the local planning authority (including local listing).”
- 5.15 Harm to designated heritage assets is categorized into ‘substantial harm’, addressed in Paragraphs 194 and 195 of the NPPF, or ‘less than substantial harm’, addressed in Paragraphs 196.
- 5.16 In terms of the effects of an application on non-designated heritage assets, Paragraph 197 requires that a balanced judgement is required that has regard to the scale of any harm or loss and the significance of the asset.
- 5.17 The effects of any development on a heritage asset, whether designated or not, needs to be assessed against its archaeological, architectural, artistic and historic interests as the core elements of the asset’s significance.
- 5.18 The setting of Heritage Assets is defined in Annex 2 of the NPPF as:

“The surroundings in which a heritage asset is experienced. Its extent is not fixed and may change as the asset and its surroundings evolve. Elements of a setting may make a positive or negative contribution to the significance of an asset, may affect the ability to appreciate that significance or may be neutral.”

5.19 National Planning Practice Guidance

- 5.19.1 The NPPG sits alongside the NPPF, adding further context, and it is intended that the two documents be read together. At its simplest the NPPF can be said to be the strategic vision, and the NPPG how you put that vision into practice. The NPPG on the 'Historic Environment' advises on all planning practises related to the historic environment, last updated in July 2019. Relevant aspects of this advice are stated in the following paragraphs.
- 5.19.2 The term 'Special architectural or historic interest' as used in legislation are used to describe all parts of a heritage asset's significance.
- 5.19.3 In respect of levels of harm paragraph 018 recognises that substantial harm is a high test. Case law describes substantial harm in terms of an effect that would vitiate or drain away much of the significance of a heritage asset. In cases where harm is found to be less than substantial, a local authority is to weigh that harm against the public benefits of the proposal.
- 5.19.4 Proposals can minimise or avoid harm to the significance of a heritage asset and its setting through first understanding significance to identify opportunities and constraints and then informing development proposals.
- 5.19.5 Paragraph 018 of the NPPG states "Heritage assets may be affected by direct physical change or by change in their setting. Being able to properly assess the nature, extent and importance of the significance of a heritage asset, and the contribution of its setting, is very important to understanding the potential impact and acceptability of development proposals."
- 5.19.6 Paragraph 013 relates to setting and states: "The extent and importance of setting is often expressed by reference to visual considerations. Although views of or from an asset will play an important part, the way in which we experience an asset in its setting is also influenced by other environmental factors such as noise, dust and vibration from other land uses in the vicinity, and by our understanding of the historic relationship between places. For example, buildings that are in close proximity but are not visible from each other may have a historic or aesthetic connection that amplifies the experience of the significance of each."

6. REASONS FOR REFUSAL

6.1 In its decision notice dated the Council stated the following two reasons for refusal:

"The proposed side extension, by virtue of its location, scale, height and design, would represent a prominent and incongruous addition that would infill an important gap between buildings and would harm the character and appearance of the host building, the adjacent Grade II listed building and the surrounding Regent's Park Conservation Area, contrary to policies D1 (Design) and D2 (Heritage) of the Camden Local Plan (2017); and

The proposed wide dormer roof extension, by virtue of its location, form and scale, would be a bulky addition that would not respect the integrity of the original roof form and would thus harm the character and appearance of the host building, contrary to policies D1 (Design) and D2 (Heritage) of the Camden Local Plan (2017)."

6.2 The side extension proposal seeks enlargement of the previously consented side extension in respect its depth and a minor change to its fenestration. The proposals therefore follow the established and acceptable principle of using the townscape gap for extension to the unlisted building.

6.3 The design development process leading to the Application adhered to the statutory duties in respect of conservation areas and listed buildings. They were developed in consultation with Jon Lowe Heritage Ltd and took account of the significance of heritage assets and the potential effect upon them, seeking to minimise or avoid harm in the interest of preserving the special interests of the assets potentially affected.

6.4 The gap between the appeal site and listed building offers an established townscape break. The set back nature of the upper storeys, presence of a yard and gated access result in a pavement fronting screen at ground floor and a role of continued street level build. One effect of this is the allowance of clear distinction between the two differing architectural forms and styles of the appeal building and its listed neighbour and physical separation of a residential building from a public house. The gap has an important role in distinguishing the two buildings, their use and architecture, but its depth is not key to continuation of this role.

6.5 The gap is not an inherent or typical feature within the conservation area and its depth is not an attribute that qualifies or defines the degree or nature of contribution it makes to the character or appearance of the conservation area. The proposed extension would not result in loss of the gap as the proposed extension would maintain a significant set back from the frontage building line and a gap would be visible in most views of the building and streetscape. The reduction in gap resulting from the additional massing would not be sufficient to reduce or fundamentally alter the contribution made by the appeal building or the adjacent listed building to the character or appearance of the conservation area. Accordingly the proposals would not harm (preserve) the significance of the conservation area.

6.6 Prior allowance of a side extension has the resultant effect of some reduction to the depth of the gap and reduction or loss of the visibility of a background within it. The proposed increase in the depth of the side extension would have no greater impact in this respect as it would not cause further loss of previously visible background.

- 6.7 Policy D2(j) is about resisting harmful changes to a listed building and is not applicable as the proposed extension would maintain a gap between the appeal site and the listed building. The proposals maintain the detached nature of the main forms of the two buildings.
- 6.8 Policy D2(k) is about harm to the significance of a listed building through an effect on its setting. The appeal site does contribute to the setting of the listed building however the listed building draws significance primarily from its architecture and form, not from the detailed nature and form of the adjacent buildings or from the exact nature and degree of the gap between them.
- 6.9 The Property is broadly contemporary with the listed building and as such the pair form part of a contemporary period of change within this part of the conservation area. The gap in the townscape is reflected in both buildings by their continuation of the high quality facing brick for a part of their side returns. On both buildings the primary facing materials make way for secondary quality stock brick and as such there is clear indication of a distinction in what is meant to be seen and appreciated. By implication the lesser quality materials illustrate what was of lesser importance or was not key to the visual appreciation of either building. The gap is therefore part of the setting of the listed building but the whole gap is not important to the appreciation and understanding of either building.
- 6.10 As the gap is being maintained, and the primary facing brick sections of the listed building will remain visible, as will be the chimney breast to the listed building, the proposals will not infill the gap. There would be partial increase in the depth of the side extension but a gap between the buildings will be maintained and the important features and facing materials would remain visible.
- 6.11 The dormer window subject to change is positioned to the subservient side elevation, towards the rear of the building. The existing dormer is not a prominent or important architectural feature in views of the building. Accordingly the feature is visually discrete and presents a low sensitivity to change in terms of any potential effects on either the listed building and the conservation area.
- 6.12 In response to the Pre-Application Advice the design of the proposed alteration to the dormer was adjusted. The designs submitted were for a traditionally designed dormer with a tripartite configuration defined by mullion framing members, the cheeks are proposed to be lead clad and the window joinery configured to maintain a multi-pane configuration in keeping with period and detail of the appeal building.
- 6.13 Any visible parts to the proposed dormer would not result in a perception of architectural disproportionality or incongruous style. The nature and degree of views afforded from public vantage points would not allow its entire form to be visible; only parts of the feature would be evident and in each case the traditional design and materiality would be experienced as part of the traditional roovescape of the building.
- 6.14 For the reasons noted above it is the considered opinion of the Appellant and its professional team that the Appeal Scheme would comply with Policies D1 and D2. The proposals will preserve the character and appearance of the conservation area and not cause harm to the setting of the listed building.

7. VU CITY RENDERINGS

- 7.1 A series of model views utilising the city wide modelling tool of Vu.City have been prepared and are submitted with the appeal at Appendix 7.
- 7.2 These are intended to illustrate the nature and degree of change that the Appeal Scheme would bring about to the townscape. The nine view points are located within the public domain and positioned on the pavements within the immediate vicinity and approach where the appeal site is visible and where the effect of the gap is evident. The model is devoid of details such as materiality, fenestration, architectural styles, street furniture and human activity and is therefore limited to assessing massing.
- 7.3 Each view is offered with the scheme consented by the 2019 Permission and proposed Appeal Scheme side-by-side for comparison.
- 7.4 The primary focus of this is to demonstrate that the proposals would maintain sufficient gap between the appeal building and adjacent listed building to preserve the character and appearance of the conservation area.

8. PROCEDURAL ISSUES

8.1 The Appellant also has concerns about how the Council has dealt with determining the Application. Particularly, that the Council failed to properly engage with the Application but based their determination entirely on the proposals discussed at Pre-Application Advice stage which had been subsequently been amended to take into account the Council's comments.

8.2 The Application was submitted for full planning permission on 20 August 2020. The Applicant chased the Council for acknowledgement of the application on 4th September 2020. No response was received so a further chasing email was sent by the Applicant to Camden Council on 21st September.

8.3 The Council emailed the Applicant by return on the 21 September. The email is at Appendix 8 but also copied here for completeness:

“Hello Keith,

Apologies, this is with me. We're all exceptionally busy at the moment; however, I will aim to get it validated today.

I actually discussed the proposal at our team meeting this morning and the consensus was that it should be refused in line with the clear pre-app advice.

Kind regards,

Kristina Smith Senior Planner”

8.4 Of note this response confirms that while the Application was not yet validated a team consensus was already formed that it should be refused.

8.5 It is respectfully highlighted to the Inspectorate that Camden, as decision maker, have a statutory duty to have special regard to the desirability of preserving a listed building or its setting (section 66 of the Act) and pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area.

8.6 The fact that the officers reached a consensus at a team meeting in advance of validation of an Application strongly implies that:

(a) officers are under pressure to process a decision and were willing to consider the effects of a proposal that potentially affected both a listed building and conservation area without adherence to the duty imposed by the Act;

(b) officers had pre-judged an application without necessary attention being paid to the full submission which, unlike the pre-application submission, included a thorough Heritage Statement that adhered to the guidance and requirements of the National Planning Policy Framework in assessing the significance of heritage assets and the effects of a proposal thereon on; and,

(c) That the application's outcome was being pre-judged without fair consideration.

9. **CONCLUSION**

- 9.1 For the reasons set out above the Appellant submits that the Application is in accordance with Policies D1 and D2 as well as national policy and statutory duties under sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act.
- 9.2 The Appellant considers that the Appeal Scheme will preserve the character and appearance of the conservation area and the setting of the listed building and should be allowed.
- 9.3 The Appellant also requests that on the basis of the Council's unreasonable behaviour in pre-judging to the refuse the Application before it had even been validated that its costs are awarded. The Appellant can provide a schedule of costs on request.